

CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Airport

AGENDA DATE: June 11, 2013

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, A.A.E. 780-4793

DISTRICT(S) AFFECTED: All

SUBJECT:

Resolution to authorize the City Manager to sign a Lessor's Acknowledgement of Assignment of a Restated Butterfield Trail Industrial Park Lease by and between the City of El Paso & Lincoln National Life Insurance Company ("Assignor") and Lago Properties LLC ("Assignee") regarding the following described property:

A portion of Lot 5, and all of Lot 6, Block 12, Butterfield Trail Industrial Park Unit Three, an addition to the City of El Paso, El Paso County Texas, and municipally known and numbered as 26 Spur Drive., City of El Paso, El Paso County, Texas.

BACKGROUND / DISCUSSION:

The City of El Paso entered into a Restated Lease with Lincoln National Life Insurance Company effective October 1, 1993 for a term of forty (40) years with three (3) additional ten (10) year Options.

John Kruger, owner of Lago Properties LLC, has been in Butterfield Trail Industrial Park doing business as GCX Corporation for 10 years. GCX specializes in mounting equipment, carts and monitoring workstations for the medical industry. Proposed improvements to this BTIP property are approximately \$450,000.00 and include making facility ADA compliant, renovating office space, installing sprinkler systems, and adding lighting and walls in the manufacturing/warehousing areas. GCX currently employs 130 individuals and expects a 10% growth over the next year.

Assignor now desires to assign all of its interest in the Lease to Lago Properties LLC ("Assignee") with all terms and conditions remaining the same. The present annual rent is \$26,352.84 with 20 years, plus an additional total of 30 Option years. Remaining total on the term is 50 years. The property is located in Butterfield Trail Industrial Park and contains approximately 194,342 square feet of land.

PRIOR COUNCIL ACTION:

10/1/93

AMOUNT AND SOURCE OF FUNDING:

This is a revenue generating lease.

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD: _____

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Lessor's Approval of Assignment of the Restated Butterfield Trail Industrial Park Lease by and among the City of El Paso ("Lessor"), The Lincoln National Life Insurance Company ("Assignor"), and Lago Properties, LLC ("Assignee") for the following described property:

A portion of Lot 5 and all of Lot 6, Block 12, Butterfield Trail Industrial Park Unit Three, an addition to the City of El Paso, El Paso County, Texas, municipally known and numbered as 26 Spur Drive, El Paso, Texas.

ADOPTED this the ____ day of _____ 2013.

THE CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

Monica Lombraña
Monica Lombraña, A.A.E.
Director of Aviation

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

LESSOR'S APPROVAL OF ASSIGNMENT

The City of El Paso ("Lessor") entered into a Restated Butterfield Trail Industrial Park Lease ("Lease") effective October 1, 1993 between the Lessor and The Lincoln National Life Insurance Company ("Assignor") for the following described property:

A portion of Lot 5 and all of Lot 6, Block 12, Butterfield Trail Industrial Park Unit Three, an addition to the City of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof; and municipally known and numbered as 26 Spur Drive, El Paso, Texas. ("Property").

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Lease from Assignor to Lago Properties, LLC ("Assignee"), on the condition that Assignee assumes and becomes liable to pay any and all sums owing or becoming due Lessor under terms of the Lease from and after the effective date of the assignment of the Lease to Assignee, and upon the further condition that Assignee agrees to accept and abide by all the terms, covenants, and conditions of the Lease.
2. **PROOF OF INSURANCE AND INDEMNIFICATION.** Assignee has provided a certificate of insurance to evidence compliance with the insurance requirements of the Lease and expressly agrees to be bound by the indemnification provisions contained in the Lease.
3. **GUARANTOR.** Assignee shall, as of the effective date of the assignment, enjoy all rights and privileges and be responsible for satisfying all such obligations the same as if the Lease had originally been executed between Lessor and Assignee. Provided, however, Assignee shall tender to Lessor an irrevocable letter of credit, or other surety acceptable to the Director of Aviation ("Security Deposit") in an amount equal to three (3) months of Rental to guarantee the faithful performance of Lessee of its obligations under this Lease and the payment of all Rental due hereunder. Assignee shall be obligated to maintain such Security Deposit in effect until the expiration of eighteen (18) consecutive months from the Effective Date of this Lessor's approval of Assignment. Within twenty (20) days after expiration of such eighteen (18) month period and if no Event of Default by Assignee has occurred, Lessor will return the Security Deposit to Assignee.
4. **RATIFICATION OF LEASE.** Except as expressly modified herein, no provision of this consent alters or modifies any of the terms and conditions of the Lease; all other terms and conditions of the Lease shall remain in full force and effect.

5. **ADDRESS FOR NOTICE.** Notices to Assignee shall be sufficient if sent by certified mail, postage prepaid, addressed to:

ASSIGNOR: The Lincoln National Life Insurance Company
100 N. Greene Street, 17th Floor
Greensboro, NC 27401
Attention: Mr. Nicholas R. Heinzelmann

With Copy to: The Lincoln National Life Insurance Company
Legal Department
100 N. Greene Street
Greensboro, NC 27401
Attn: Mary Jo Potter

ASSIGNEE: Lago Properties, LLC
1680 Grand Avenue
San Rafael, California 94131
Attention: John M. Kruger, Owner

6. **AUTHORIZED REPRESENTATIVE.** The persons signing this Lessor's Approval of Assignment on behalf of the Assignee and Assignor represent and warrant that they have the authority legally to bind the Assignee and Assignor, respectively, to the provisions of this Lessor's Approval of Assignment.
7. **NON-WAIVER.** This Lessor's Approval of Assignment hereby given by Lessor shall not end the need for Lessor's consent for any future assignments.
8. **EFFECTIVE DATE.** The parties have executed this Lessor's Approval of Assignment hereto this ____ day of _____ 2013.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

ADOPTED this ____ day of _____, 2013


LESSOR: CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:


Monica Lombraña, A.A.E.
Director of Aviation

LESSOR'S ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2013,
by **Joyce A. Wilson** as **City Manager** of the **City of El Paso, Texas**. (Lessor)

My Commission Expires:

Notary Public, State of Texas

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

ASSIGNOR:

The Lincoln National Life Insurance Company

John R. Barber
Printed Name: John R. Barber
Title: Vice President

ASSIGNOR'S ACKNOWLEDGEMENT

THE STATE OF NC)
COUNTY OF County)

This instrument was acknowledged before me on this 30th day of May, 2013,
by John R. Barber as VP of The Lincoln National Life Insurance
Company (Assignor).

Debra B. Sears
Notary Public, State of NC

My Commission Expires:
6-17-17

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]



ASSIGNEE: Lago Properties, LLC

John M. Kruger
Printed Name: John M. Kruger
Title: PARTNER

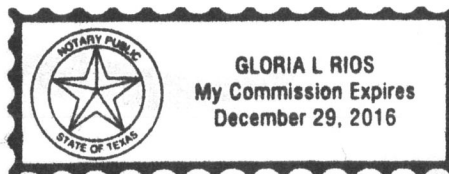
ASSIGNEE'S ACKNOWLEDGEMENT

THE STATE OF Texas
COUNTY OF El Paso

This instrument was acknowledged before me on this 29 day of May,
2013, by John M. Kruger as Partner of Lago Properties, LLC (Assignee)

Gloria L. Rios
Notary Public, State of Texas

My Commission Expires:
12.29.16



PROPERTY DESCRIPTION
194,342 SQUARE FEET OR 4.462 ACRES

#26 Spur Dr.

Being a portion of Lot 5, all of Lot 6, Block 12, Butterfield Trail Industrial Park Unit Three, City of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

COMMENCING for reference at the centerline intersection of Celerity Wagon Street (90.00 feet wide) and Spur Drive (90.00 feet wide);

THENCE, along the centerline of said Spur Drive, North 87°54'08" West, a distance of 290.00 feet to a point;

THENCE, leaving said centerline, South 02°05'52" West, a distance of 45.00 feet to the northeast corner of Lot 6, Block 12, and POINT OF BEGINNING for the herein described tract:

THENCE, along the easterly line of said Lot 6, South 02°05'52" West, a distance of 406.15 feet to the southeast corner of said Lot 6;

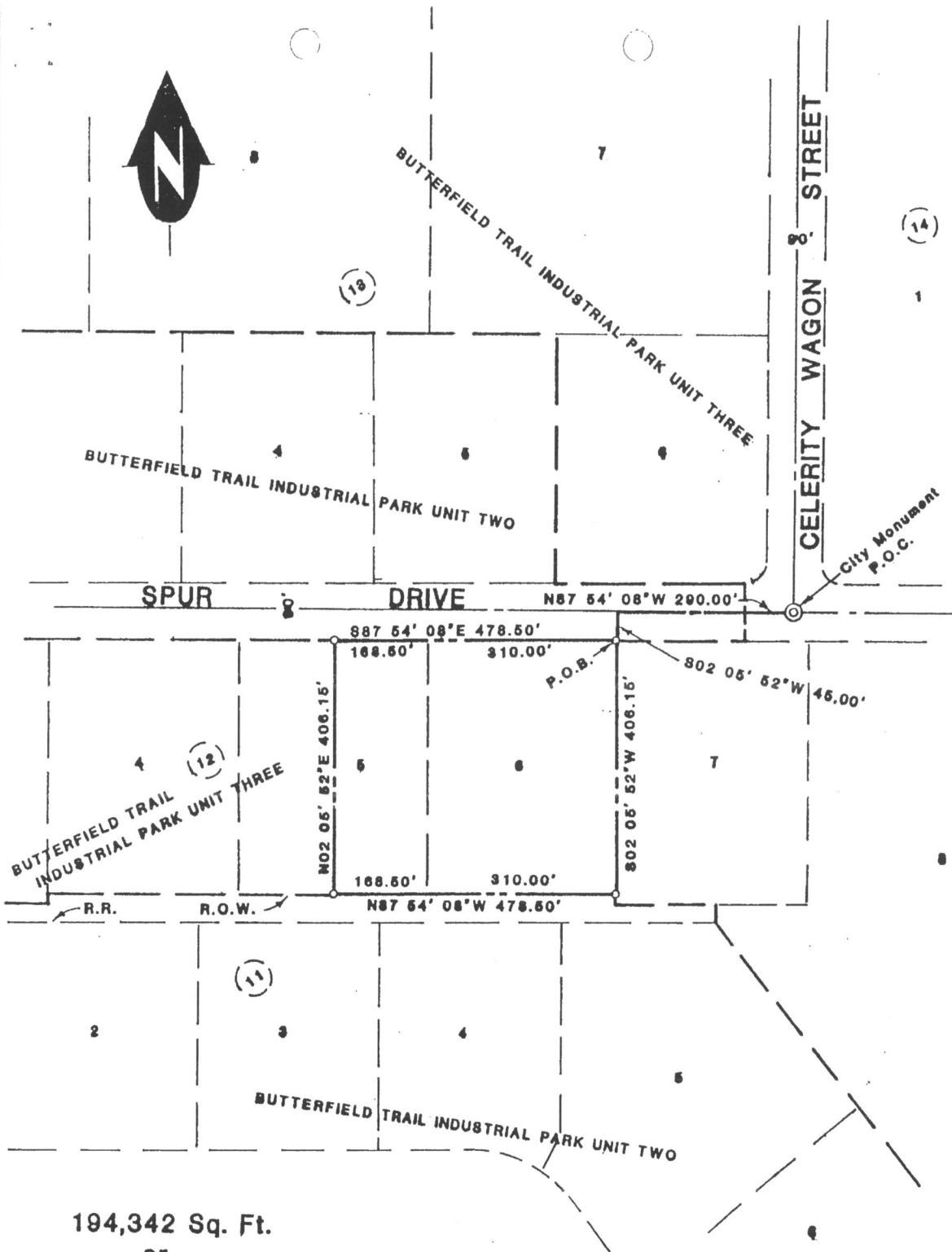
THENCE, along the south line of said Lot 6, North 87°54'08" West, a distance of 478.50 feet to a point in the south line of said Lot 5;

THENCE, leaving the south line of said Lot 5, North 02°05'52" East, a distance of 406.15 feet to a point in the north line of said Lot 5 in the south right-of-way line of said Spur Drive;

THENCE, along the south line of said Spur Drive, South 87°54'08" East, distance of 478.50 feet to the POINT OF BEGINNING and containing 194,342 square feet or 4.462 acres of land.

Prepared By:
FAUGHT & ASSOCIATES INC.
El Paso, Texas
September 14, 1987
Job No. 5510-03





194,342 Sq. Ft.
or
4.462 Acres



Faught & Associates Inc.

Consulting Engineers

1661 Montana Ave.
El Paso, Texas 79902
(915) 542-4900

PORTION OF LOT 5 AND ALL OF LOT 6,
BLOCK 12, BUTTERFIELD TRAIL INDUSTRIAL
PARK UNIT THREE, CITY OF EL PASO,
EL PASO COUNTY, TEXAS.

Drawn by JC

Date 9-11-87

1" : 200'

Job No. 5510-03
W.O. No.